

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
MCALLEN DIVISION**

UNITED STATES OF AMERICA,

Plaintiff,

v.

1.71 ACRES OF LAND, MORE OR
LESS, ET AL,

Defendants.

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CASE NO. 7:08-CV-207

UNOPPOSED MOTION TO EXTEND SCHEDULING ORDER DEADLINES

Defendants Noelia Montalvo Muñoz and Sylvia M. Ramirez (hereafter “Defendants”) respectfully move for a continuance of all deadlines set out in the Scheduling Order entered on August 21, 2020¹ in light of a January 20, 2021 Presidential Proclamation directing a 60-day period for the United States to develop “a plan for the redirection of funds concerning the southern border wall.”²

PROCEDURAL HISTORY

1. On August 21, 2020, this Court entered an Amended Scheduling Order³ upon granting Defendant Maria Cecilia Benavides’⁴ Unopposed Motion for Continuance.⁵
2. Plaintiff’s deadline to file pleading amendments was February 5, 2021,⁶ and no amended pleadings were filed.

¹ Dkt. 129.

² Pres. Proc. No. 10142, 86 Fed. Reg. 7225 (Jan. 20, 2021), <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/20/proclamation-termination-of-emergency-with-respect-to-southern-border-of-united-states-and-redirection-of-funds-diverted-to-border-wall-construction/>.

³ Dkt. 129.

⁴ Counsel for Defendants has conferred with counsel for Maria Cecilia Benavides, who is unopposed to this Motion.

⁵ Dkt. 126.

⁶ Dkt. 129.

3. As of the date of this Motion, Plaintiff's Second Amended Complaint⁷ is the governing Complaint.

RELIEF REQUESTED

4. In light of the January 20, 2021 Presidential Proclamation directing multiple federal agencies to formulate "a plan for the redirection of funds concerning the southern border wall" within 60 days,⁸ Defendants respectfully request this Court issue at least a 60-day continuance of all current deadlines. The continuance sought will not prejudice the parties and will preserve judicial and party resources as set out below.
5. This is a federal land condemnation action seeking to acquire property "to construct roads, fencing, vehicle barriers, security lighting, and/or related structures designed to help secure the United States/Mexico border within the State of Texas."⁹
6. Although this case commenced against Defendants in 2008,¹⁰ the current Second Amended Complaint was filed on April 27, 2017,¹¹ and Plaintiff stated in its Status Report of October 7, 2019 that "[t]he United States is in the process of determining what additional land, if any, the United States will need to take from owners who are part of this proceeding."¹² At the Status Conference of October 10, 2019, Plaintiff indicated it was "still determining what additional land to take."¹³

⁷ Dkt. 47.

⁸ Pres. Proc. No. 10142, 86 Fed. Reg. 7225 (Jan. 20, 2021) at Sec. 2.

⁹ Dkt. 47.

¹⁰ Dkt. 1.

¹¹ Dkt. No. 47.

¹² Dkt. 107 ¶ 6.

¹³ Minute Entry (Oct. 10, 2019).

7. On February 21, 2020, Plaintiff United States filed a Notice of Completed Surveys¹⁴ pursuant to representations made to the Court at a February 11, 2020 status conference¹⁵ in anticipation of potential future takings.
8. On January 20, 2021, President Joseph R. Biden executed a Presidential Proclamation terminating the national emergency at the southern border of the United States and directing “a careful review of *all* resources appropriated or redirected to construct a southern border wall” through the development of “a plan for the redirection of funds concerning the southern border wall.”¹⁶
9. The plan for the redirection of funds concerning the southern border wall is expected to be developed within 60 days from the date of the Proclamation.¹⁷
10. All parties in this case have been served pursuant to Rules 4 and 71.1 of the Federal Rules of Civil Procedure.
11. Construction has not yet begun on any of the subject property tracts, described in the Second Amended Complaint¹⁸ as Tracts RGV-RGC-1066, RGV-RGC-1070, RGV-RGC-1071, RGV-RGC-1072, RGV-RGC-1073, RGV-RGC-1074, RGV-RGC-1075, RGV-RGC-1090, RGV-RGC-1091, RGC-RGC-1092, RGV-RGC-1093, RGV-RGC-1094 and RGV-RGC-1095.¹⁹
12. This Court has recently granted continuances in fee simple border wall condemnation cases based on the new circumstances presented by the Proclamation. *United States v. 6.584 Acres of Land, More or Less*, No. 7:20-CV-00244, Dkt. 55 (S.D. Tex. Feb. 2, 2021); *United States v. 0.501 Acres of Land, More or Less*, No. 7:20-CV-00066, Dkt. 35 (S.D. Tex. Feb. 2, 2021).
13. The plan for redirecting funding and repurposing contracts to be developed within 60 days of

¹⁴ Dkt. 122.

¹⁵ *Id.*

¹⁶ Pres. Proc. No. 10142, 86 Fed. Reg. 7225 (Jan. 20, 2021)(emphasis added).

¹⁷ *Id.* at Sec. 2.

¹⁸ Dkt. 47.

¹⁹ *Id.*.

the Proclamation may impact design and construction plans and the necessity for any current and potential additional takings.

14. Based on the foregoing, Defendants Noelia Montalvo Muñoz and Sylvia M. Ramirez respectfully request the Court grant this Motion and enter an order continuing all deadlines for at least 60 days from January 20, 2021.

CERTIFICATE OF CONFERENCE

Undersigned counsel for Defendants Noelia Montalvo Muñoz and Sylvia M. Ramirez conferred with counsel for Plaintiff United States on February 4, 2021 and February 9, 2021, and with counsel for Defendant Maria Cecilia Benavidez on February 5, 2021, who both stated they are unopposed to the Motion. Plaintiff United States is of the position that the Scheduling Order²⁰ only applies to tracts RGV-RGC-1091 and RGV-RGC-1092, and does not apply to our clients' tract RGV-RGC-1074.

Dated: February 9, 2021

TEXAS CIVIL RIGHTS PROJECT

By: /s/ Ricardo A. Garza
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²⁰ Dkt. No. 129.

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*Attorneys for Defendants Noelia Montalvo Muñoz and
Sylvia M. Ramirez*

CERTIFICATE OF SERVICE

I, Ricardo A. Garza, hereby certify that on this 9th day of February 2021, a copy of the foregoing was served on all parties in accordance with the Federal Rules of Civil Procedure.

/s/ Ricardo A. Garza

Ricardo A. Garza

*Attorney for Defendants Noelia Montalvo Muñoz and
Sylvia M. Ramirez*